

### REMARKS

Applicants respectfully request entry of the remarks submitted herein. Claims 1-8, 26, 27, 33, 38, and 40 are pending and claims 9-25, 28-32, 35, 36, and 39 are withdrawn as directed toward non-elected species. Reconsideration of the pending application is respectfully requested.

#### The 35 U.S.C. §102 Rejections

Claims 1-8, 33 and 38 stand rejected under 35 U.S.C. §102(e) as being anticipated by Orbay (US Patent No. 6,440,135). The Examiner asserted that Figures 2-9 in Orbay et al. show a fixation plate kit and method of repairing a distal radius fracture having all the limitations recited in the above-listed claims. Applicants respectfully traverse this rejection.

Applicants submit herewith a Declaration under 37 CFR §1.131 executed by Dr. Matthew D. Putnam that indicates that the date of the instant invention was prior to the February 1, 2000 effective filing date of Orbay et al. In view of the attached Declaration, the Orbay et al. patent, even as of its effective filing date, is not available as prior art under 35 U.S.C. §102(e) and Applicants respectfully request that the rejection of claims 1-8, 33 and 38 under 35 U.S.C. §102(e) be withdrawn.

#### Request for Rejoinder

Claims 9-25, 28-32, 35, 36, and 39 stand withdrawn as directed to non-elected species. Since claims 1-8, 26, 27, 33, 38 and 40 should be allowable in view of the remarks herein and the Examiner has already indicated the allowability of claims 34 and 37, Applicants respectfully request that claims 9-25, 28, 29, 31, 32, 35, 36, and 39 be rejoined and allowed pursuant to MPEP §821.04(b).

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CONCLUSION

Applicants respectfully request that claims 1-40 be allowed. Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

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